

Internal Revenue Service

Number: **201703012**

Release Date: 1/20/2017

Index Number: 357.02-02, 361.02-02,
355.05-01

In Re:

Distributing =

Controlled =

Business A =

Business B =

Business B LLC =

State X =

State Y =

Pension Plan =

Pension Plan Amount =

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:BO1

PLR-116160-16

Date:

September 20, 2016

Financial Statements =

a =

b =

c =

d =

e =

f =

g =

h =

i =

k =

Dear :

This letter responds to your authorized representatives' letter dated May 13, 2016, requesting a ruling on certain federal income tax consequences of a proposed transaction (the "Proposed Transaction"). The information submitted in that request and subsequent correspondence is summarized below.

The ruling contained in this letter is based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

This letter and the rulings contained herein are issued pursuant to section 6.03 of Rev. Proc. 2016-1, 2016-1 I.R.B. 1, 19, regarding one or more significant issues under sections 355, 357, and 361, and only address one or more discrete legal issues involved in the transaction. This Office expresses no opinion as to the overall tax consequences of the Proposed Transaction described in this letter or as to any issue not specifically addressed by the rulings below.

Summary of Facts

Distributing is a publicly traded State X corporation and the parent of a worldwide group of entities that conduct Business A and Business B. The domestic portion of Business B is conducted primarily by Business B LLC, a State Y limited liability company, and its subsidiaries. Business B LLC is wholly owned by Distributing and disregarded as an entity separate from Distributing for federal income tax purposes (a “DRE”) under § 301.7701-3(b)(ii) of the Procedure and Administration Regulations. The foreign portion of Business B is conducted by direct and indirect subsidiaries of Distributing.

Proposed Transaction

The proposed transaction will be done to separate Business B from Business A into Controlled, a separate, publicly traded corporation. In the transaction steps described below, debt described as issued or assumed by Controlled includes debt issued or assumed by a subsidiary of Controlled that is a DRE.

(i) Controlled has been formed as a new, first-tier domestic subsidiary of Distributing.

(ii) Distributing will borrow from third-party lenders the Assumable Debt in the expected amount of a dollars. This debt, by its terms, is assumable by Controlled and will be assumed by Controlled in step (iii), below. Distributing will use the proceeds of the Assumable Debt solely to satisfy its liabilities to the Pension Plan, repay its creditors, and/or make distributions to Distributing shareholders.

(iii) Distributing will transfer to Controlled all the equity interests in Business B LLC and any other Business B assets and entities it holds directly in exchange for: (a) Controlled common stock and, potentially, Controlled preferred stock, (b) debt securities (the “Controlled Securities”) issued by Controlled in the expected amount of b dollars, (c) cash in the expected amount of c dollars (the “Cash Amount”) that will be funded by

newly issued Controlled debt (the “Controlled Debt”), and (d) the assumption by Controlled of the Assumable Debt and certain other liabilities of Distributing (the “Contribution”). Distributing will effect a series of steps pursuant to which the foreign portion of Business B will be transferred to Controlled.

(iv) Distributing expects to exchange all or part of the Controlled Securities received in step (iii) in exchange for outstanding Distributing debt that had been recently purchased by a group of financial institutions (the “DE Distributing Debt”). This transaction is the “Debt Exchange”. These financial institutions will have held the DE Distributing Debt for their own account for a period of at least f days before entering into an exchange agreement with Distributing to exchange the DE Distributing Debt for the Controlled Securities, and for a period of at least g days before effecting that exchange.

(v) No more than d months after the initial distribution of Controlled stock to Distributing’s shareholders, Distributing will transfer all or part of the Cash Amount to its creditors in satisfaction of existing Distributing debt (the “Debt Cash Purge”), and distribute any remaining part of the Cash Amount to its shareholders, including in the form of regular quarterly dividends (the “Dividend Cash Purge”). The Debt Cash Purge may include a payment to the Pension Plan. Payments to the Pension Plan made as part of the Debt Cash Purge and/or from the proceeds of the Assumable Debt will not exceed the Pension Plan Amount.

(vi) Distributing will distribute at least 80 percent of the common stock of Controlled pro rata to Distributing common shareholders (the “Initial Distribution”). In addition, if Distributing received any Controlled preferred stock in step (iii), it will distribute 100 percent of that preferred stock to the Distributing preferred shareholder. If Distributing distributes less than 100 percent of the Controlled stock in the Initial Distribution, then Distributing intends to, within e months after the Initial Distribution and pursuant to a single integrated plan, distribute the remaining stock of Controlled (the “Retained Stake”) through either or both of (a) the Equity Exchange (described in step (vii), below), or (b) one or more distributions of Controlled stock to Distributing shareholders, either through distributions of Controlled stock in redemption of Distributing stock pursuant to a public exchange offer, or pro rata distributions to Distributing shareholders (the transactions described in clauses (a) and (b), collectively, the “Subsequent Distributions”). Distributing will dispose of the Retained Stake as soon as reasonably practicable following the Initial Distribution and, in any event, no later than five years following the Initial Distribution.

(vii) Distributing expects to exchange all or part of the Retained Stake for outstanding Distributing debt that that will have been recently purchased by a group of financial institutions (the “EE Distributing Debt”). This transaction is the “Equity Exchange.” These financial institutions will have held the EE Distributing Debt for their own account for a period of at least f before entering into an exchange agreement with

Distributing to exchange the EE Distributing Debt for the Controlled stock, and for a period of at least g before effecting that exchange. This exchange and related transactions may be repeated one or more times, depending on how much Controlled stock Distributing exchanges.

Although the financial institutions involved in the Equity Exchange would engage the underwriters to sell a specific amount of Controlled stock in an offering, the underwriting agreement may allow the underwriters the option to purchase up to h percent more Controlled stock from the financial institutions for a period of time after the offering (the “Over-Allotment Option”).

Distributing states that certain liabilities of Distributing that will be assumed by Controlled relating to certain employee benefits, leases, and legal settlements will, at the time of their assumption, not have given rise to a deduction or resulted in the creation of, or increase in the basis of, any property. These liabilities (the “Specified Liabilities”) will become deductible by Controlled if and when they satisfy the timing and certainty requirements for a deduction under Controlled’s method of tax accounting.

The aggregate amount of Controlled debt immediately after the Proposed Transaction will not exceed i dollars. This amount of debt is consistent with a capital structure that is appropriate for Controlled, taking into account Controlled’s business, its industry, its projected income and cash flow requirements, and certain other factors. The amount of debt incurred by Controlled will be determined in part based on feedback from corporate debt rating agencies.

Representations

Taxpayer has submitted the following representations in connection with the proposed transaction.

(a) The incurrence of the Specified Liabilities did not result in the creation of, or increase in, the basis of any property.

(b) The Specified Liabilities may be accrued by Distributing for financial accounting purposes, but will not meet the timing or certainty requirements to be deducted under Distributing’s method of tax accounting. The Specified Liabilities will become deductible by Controlled if and when they satisfy the timing and certainty requirements for a deduction under Controlled’s method of tax accounting after the Contribution.

(c) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing will each equal or exceed the sum of (a) the total liabilities assumed (within the meaning of section 357(d), but excluding any liabilities to which section 357(c)(3) applies) by Controlled, and (b) the total amount of money and the fair

market value of any property included in “other property or money” (within the meaning of section 361(b)) received by Distributing and Controlled and transferred to Distributing’s creditors in connection with the transaction.

(d) The liabilities assumed (within the meaning of section 357(a)) by Controlled in the Contribution were (i) incurred in the ordinary course of business and are associated with the assets transferred (or deemed transferred for U.S. federal income tax purposes) to Controlled in connection with the Contribution) or (ii) incurred to facilitate the appropriate liquidity and capital structure for each of Distributing and Controlled.

(e) The amount of Distributing debt that will be repaid or otherwise retired as part of (i) the Debt Cash Purge, (ii) the Debt Assumption, (iii) the Debt Exchange, and (iv) the Equity Exchange will not, in the aggregate, exceed the weighted quarterly average of third party debt of Distributing for the 12-month period ending on the close of the last full business day before the date on which Distributing’s board of directors initially discussed the separation.

(f) Neither the DE Distributing Debt exchanged for Controlled Securities pursuant to the Debt Exchange, nor the EE Distributing Debt exchanged for Controlled stock pursuant to the Equity Exchange was incurred in anticipation of the Spinoff.

(g) If Distributing distributes less than 100 percent of the Controlled stock in the Initial Distribution, it will do so in order to facilitate an appropriate capital structure for Distributing and Controlled.

(h) No person who was a shareholder of Distributing on the record date for the Initial Distribution will receive a 50 percent or greater interest in Controlled solely by virtue of receiving stock in Controlled in the Initial Distribution and the Subsequent Distributions.

(i) None of Distributing’s directors or officers will serve as a director or officer of Controlled as long as Distributing retains all or a portion of the Retained Stake, except that if k of Distributing’s directors or officers serve as a director of Controlled while Distributing retains all or a portion of the Retained Stake, each will do so solely to accommodate Controlled’s business need for a director with his or her unique experience or expertise and provide a sense of continuity.

(j) Distributing will dispose of the Retained Stake as soon as reasonably practicable following the Initial Distribution and, in any event, no later than five years following the Initial Distribution.

(k). Distributing will vote its Controlled stock in the same proportion to the votes cast by Controlled’s other shareholders.

(l) The amount of Controlled stock Distributing exchanges in the Equity Exchange (taking into account any additional amount of Controlled stock exchanged as a result of the exercise of the Over-Allotment Option) will not under any circumstances exceed 20 percent of the aggregate amount of Controlled stock outstanding.

Rulings

Based on the information submitted and the representations set forth above, and provided that the relevant transactions otherwise qualify under sections 355 and 368(a)(1)(D), we rule as follows:

(1) The Specified Liabilities will be excluded in determining the amount of liabilities of Distributing assumed by Controlled for purposes of sections 357(a), 357(c), 358(d), and 361(c)(3).

(2) The Pension Plan will be treated as a creditor of Distributing to the extent of the Pension Plan Amount for purposes of section 361(b)(3) and 361(c)(3).

(3) The involvement of the Financial Institutions in the Exchanges will not preclude the application of section 361(c)(3) to the Debt Exchange and the Equity Exchange. The exercise of the Over-Allotment Option by the underwriters involved in the Equity Exchange will not preclude the application of section 361(c)(3) to any portion of the Equity Exchange.

(4) The Debt Cash Purge and the Dividend Cash Purge will be treated as being distributed pursuant to the plan of reorganization for purposes of sections 361(b)(1)(A) and 361(b)(3). Distributing will not be required to segregate or otherwise trace the cash received from Controlled in the Contribution. Any Subsequent Distributions that occur within e months of the Initial Distribution will be treated as occurring pursuant to the plan of reorganization for purposes of sections 361(c)(1) and 361(c)(3).

(5) Distributing's continued ownership of the Retained Stake until its disposition within five years of the Initial Distribution will not be in pursuance of a plan having as one of its principal purposes the avoidance of U.S. federal income tax for purposes of section 355(a)(1)(D)(ii).

Caveats

Except as specifically provided herein, no opinion is expressed or implied concerning the tax treatment of the proposed transaction under any provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed as to the tax treatment of the transactions in which the foreign portion of Business B will be transferred to Controlled.

Also, no opinion is expressed as to whether the Specified Liabilities are, in fact, liabilities that will give rise to a deduction for federal income tax purposes.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number (PLR-116160-16) of this letter ruling.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to two of your authorized representatives.

Sincerely,

Isaac W. Zimbalist
Senior Technician Reviewer
Branch 3
Office of Associate Chief Counsel
(Corporate)

cc: